IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

Crl.MC.No. 321 of 2007()

C.C.NO.1082 OF 2005 OF THE J.F.C.M, KOYILANDY

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PETITIONER:

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1. K.CHANDRIKA, W/O.(LATE) CHANDRAN,
   KONATHODI, THALAKULATHOOR AMSOM,
   KOZHIKODE.

2. SHAIJU, S/O.(LATE) CHANDRAN,
   KONATHODI, THALAKULATHOOR AMSOM,
   KOZHIKODE.

BY ADV. SRI.P.S.SREEDHARAN PILLAI
SMT.C.G.PREETHA

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. KOUSALYA, W/O.SWAMIKUTTY,
   KOZHIKKAL, ALATHOOR AMSOM, KOZHIKODE.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.321 of 2007

Dated this the 13th day of February, 2007

ORDER

The petitioners are accused in a prosecution, inter alia, under Sections 464 & 471 read with 34 I.P.C. The 2nd respondent is the complainant. Cognizance has been taken of the said offences on the basis of a private complaint filed by the 2nd respondent before the learned Magistrate. The crux of the grievance of the 2nd respondent is that the petitioners in furtherance of their common intention, had falsely created a forged statement purported to be signed by the 2nd respo ndent, which he had not really signed and by such process had gained unjust enrichment.

2. According to the defacto complainant, she never signs and affixes her thumb expression only. According to the petitioners, this averment is totally incorrect and there are documents ,including one of them produced before this Court as Annexure-III, which would indicate that the complainant signs also and does not always affix her thumb impression.

3. In proceedings under Section 482 Cr.P.C, no authentic finding on the genuineness of the signature in the disputed document can be entered by this Court. Therefore looking into Annexure-III, I cannot possibly come to a conclusion at this stage that the signature

appearing in the disputed document, is genuine and has been affixed by the complainant/2nd respondent herein. The prayer for quashing of the proceedings, on that ground, cannot therefore succeed.

4. Alternatively, the learned counsel for the petitioners raises another grievance. She complains that though the complaint was taken on file as C.C.1082 of 2005 and the petitioners have entered appearance already, no enquiry under Section 244 Cr.P.C has commenced so far, thereby obliging the petitioners to suffer the trauma of this prosecution. If the enquiry under Section 244 Cr.P.C were conducted, it would have been possible for the petitioners to cross examine the 2nd respondent and expose the hollowness of the allegations before the learned Magistrate. Consequently they could have claimed discharge under Section 245(2) or 245(1) Cr.P.C. Because of the delay involved in commencing the enquiry under Section 244 Cr.P.C, the petitioners are compelled to suffer the trauma of continuance of this prosecution.

5. I find merit in that prayer. I am satisfied, that a direction can be issued to the learned Magistrate to commence and complete the enquiry under Section 244 Cr.P.C in this case as expeditiously as possible - at any rate, within a period of 3 months from the date on which a copy of this order is placed before the learned Magistrate.

6. This Crl.M.C is, accordingly allowed in part, to the above extent. Hand over a copy of this order to the learned counsel for the petitioners for immediate production before the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-